

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 21 December 2015 determined that under section 9(2) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), the appellant was not eligible for income assistance or disability assistance because his net income determined under Schedule B of the EAPWDR exceeded the assistance rate for his family unit determined under Schedule A of the EAPWDR and therefore he was not eligible for Person with Disabilities (PWD) designation.

PART D – Relevant Legislation

EAPWDR, s. 1, 9 and 62,
Schedule A, s. 2 and 4 and
Schedule B, s. 1, 6 and 7.

PART E – Summary of Facts

With the consent of parties, the hearing was conducted in writing pursuant to section 22(3) (b) of the *Employment and Assistance Act (EAA)*.

The following evidence was before the ministry at the time of reconsideration:

- The appellant applied for PWD designation with a spouse and 4 dependent children.
- On 2 June 2015, the appellant was advised that his income exceeded the rate of disability assistance for his family unit; however, the appellant still wanted to apply for PWD designation and in error the ministry provided him with the PWD application form.
- On 8 July 2015, the Health Assistance Branch declined to adjudicate the appellant's PWD application because he was not eligible for disability assistance since his income exceeded the legislated rate of assistance.
- On 15 September 2015, the ministry verified the appellant's net income and it still exceeded the legislated rate of disability assistance.
- On 27 October 2015, the ministry requested that the appellant provide additional information regarding his financial situation: bank statements, updated information from an insurance company, confirmation that Employment Insurance was exhausted and a letter verifying Canada Pension Plan Disability (CPPD) payments.
- On 6 November 2015, the ministry had enough information to confirm that the appellant's income was in excess of the legislated disability assistance rate for the appellant's family unit. The ministry sent a letter to the appellant advising that he was not eligible for assistance.
- On 26 November 2015, the appellant informed the ministry that he had received the 6 November 2015 letter and indicated that money was not the issue but that he wanted the other benefits associated with PWD designation, such as bus pass, extended health and better medical coverage.
- In his Request for Reconsideration dated 7 December 2015 the appellant indicated the following:
 - He confirmed his monthly CPPD pension for which he was satisfied and indicated he was not requesting financial assistance from the province.
 - He indicated that his CPPD and insurance plan do not cover a number of benefits that the province does and the coverage his insurer provides has limits and is not enough for a family unit of 6.
 - He needs a new hearing aid since his current one is not good enough anymore and he cannot afford one because his insurance plan does not allow a new one for another 3 years.
 - He needs a bus pass that he cannot afford if he is not designated as a PWD.
 - He also needs the PWD designation for tax credits.
 - With the designation, he would be able to get any other benefits for which he may qualify.
 - He is no longer receiving EI and his total monthly income is \$1,789.49. He cannot provide more documents as he has already submitted what was available online.

Additional Submissions:

With his Notice of Appeal dated 24 December 2015 the appellant reiterated the information he provided with his Request for Reconsideration confirming he was not asking for disability assistance from the province but only for other benefits that would come with a PWD designation. He added that



when his children turn 18, he will lose their benefits and will be left with only \$705 per month, which is not even enough to cover his rent.

The panel accepts the submission as argument in support of the appellant's position as presented at reconsideration.

For the written hearing the appellant relies on his submissions with his Notice of Appeal and the ministry relies on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision determining that the appellant was not eligible for income assistance or disability assistance because his net income determined under Schedule B of the EAPWDR exceeded his family unit's assistance rate determined under Schedule A of the EAPWDR and he was therefore not eligible to apply for PWD designation was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Section 1(1)(g) of the EAPWDR states that:

1(1) In this regulation:

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:...

(d) insurance benefits, except insurance paid as compensation for a destroyed asset

...

(f) any type or class of Canada Pension Plan benefits;

The ministry argued that insurance benefits and the CPPD were unearned income and the appellant did not dispute that. Schedule B of the EAPWDR sets out exemptions and deductions in calculating monthly income. The appellant does not dispute that those exemptions and deductions do not apply to his unearned income.

Section 9 of the EAPWDR imposes limits on income:

9 (1) For the purposes of the Act and this regulation, **"income"**, in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

The appellant did not dispute that his monthly unearned income exceeds the disability assistance rate for his family unit. The appellant argued that he would be eligible for other provincial benefits if he were designated as a PWD. S. 62 states:

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

(a) a family unit in receipt of disability assistance,

(b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or

(c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

The appellant argues that he is entitled to apply for a PWD designation even though he is not applying for disability assistance because it would allow him to access other provincial benefits, including a new hearing aid and a bus pass. He understands that the ministry followed the letter of the law but he argues that the ministry should be flexible and create some space where desperate individuals can get the help they need. He suggests that minor changes to the policies and the legislation might therefore be necessary.

The ministry argues that the legislation does not allow any flexibility when an individual's income, such as the appellant's unearned income, exceeds the monthly disability assistance rate. In those cases, the ministry argues that if a person is not eligible for income or disability assistance, then that person is not eligible to apply for PWD designation. Further, to access the other provincial benefits, including health supplements, a person must be a recipient or former recipient of disability assistance with PWD designation. Since the appellant is not a recipient or a former recipient of disability assistance, the ministry argues that he is not eligible to receive health supplements.

Panel decision:

The panel notes that the appellant does not dispute that his unearned income exceeds the monthly disability assistance rate that applies to his family unit but he argues that the legislation should be changed to accommodate his situation or the situation of people like him who need help. This argument cannot succeed as the panel's jurisdiction is determined by s. 24 of the EAA:

- 24** (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,
- (a) reasonably supported by the evidence, or
 - (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

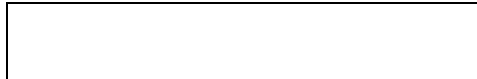
In other words, the panel does not have the jurisdiction to determine whether the legislation, the regulation or the policies of the government are fair or need to be changed; the panel can only determine whether the ministry's reconsideration decision is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Although the appellant calculated his monthly income as \$1,789.49, and not \$2,486 as noted by the ministry, the panel notes that both parties agree that the appellant's monthly unearned income at this time exceeds the disability and income assistance rates for his family unit and the panel therefore finds the ministry reasonably determined that under s. 9(2) of the EAPWDR, the appellant was not eligible for assistance.

The panel also notes that to be eligible for the monthly benefits associated with PWD designation, a person must be a recipient of income or hardship assistance (for health supplements under section 62 of the EAPWDR), and a recipient of disability assistance (for a bus pass supplement, under s. 51 of the EAPWDR). There is no legislative discretion for the ministry to provide other "benefits" to a person or a family unit that is not otherwise eligible for assistance. Thus, the panel finds the ministry reasonably determined that the appellant would not be eligible for any of the ministry supplements for which a PWD would otherwise be eligible.

Finally, the panel notes that a PWD designation does not change the fact that to access any of the supplements offered to a person with a PWD designation, a person must be a recipient of assistance or a "continued person" under s. 61.1 of the EAPWDR, and none of these requirements apply to the appellant.

Conclusion:



For all of these reasons and taking into account the evidence presented, the panel finds that the ministry's reconsideration decision determining that the appellant was not eligible to apply for PWD designation under s. 2 of the Employment and Assistance for Persons with Disabilities Act is a reasonable application of the legislation in the circumstances of the appellant and confirms the ministry's decision.